

payments to the broker carrying any account referred to in paragraph (a)(1) of this section as appropriate if such payments do not exceed the balance of the statement of account generated under paragraph (a)(1) of this section with respect to which such contracts are credited. Any customer for which commodity contracts remain open subsequent to the primary liquidation date will not be relieved of the obligation to make margin payments by reason of the bankruptcy of the commodity broker: *Provided*, That the full amount of any margin payment made by a customer subsequent to the primary liquidation date must be credited to the account referred to in paragraph (a)(1) of this section for which it was made.

(5) *Distribution*. No distribution of equity may be made to or on behalf of customers by the trustee with respect to an account established in accordance with paragraph (a)(1) of this section, except pursuant to paragraph (a)(4) of this section and to § 190.08(d).

(b) *Liquidation of open commodity contracts*. Commodity contracts held open by the trustee in accordance with paragraph (a)(1) of this section must be liquidated promptly and in an orderly manner, if:

(1) Any payment of margin would result in a deficit in the account in which they are held;

(2) The customer for, or on whose behalf, the account is held fails to meet a margin call within a reasonable time;

(3) The trustee has received no customer instructions with respect to such contract by the close of business on the fifth business day after entry of the order for relief;

(4) The commodity contract has not been transferred in accordance with § 190.08(d)(2) on or before the close of business on the tenth business day after entry of the order for relief; or

(5) The commodity contract would otherwise remain open beyond the last day of trading in such contract or the first day on which notice of delivery may be tendered with respect to such contract, whichever occurs first.

(c) *Liquidation of specifically identifiable property other than open commodity contracts*. All specifically identifiable property other than open commodity

contracts which have not been liquidated prior to the primary liquidation date, and for which no customer instructions have been timely received must be liquidated, to the extent reasonably possible, no later than the close of business on the fifth business day after final publication of the notice referred to in § 190.02(b)(1). All other specifically identifiable property must be liquidated or returned, to the extent reasonably possible, no later than the close of business on the tenth business day after final publication of such notice.

#### **§ 190.04 Operation of the debtor's estate—general.**

(a) *Compliance with the Act and regulations*. Except as specifically provided otherwise in this part, the trustee shall comply with all of the provisions of the Act and of the regulations thereunder as if it were the debtor.

(b) *Computation of funded balance*. Using the information available, the trustee must compute a funded balance for each customer account which contains open commodity contracts as of the close of business each day subsequent to the order for relief until the final liquidation date. Such computation must be completed prior to noon on the next business day.

(c) *Records*—(1) *Maintenance*. Subject to the requirements of the Bankruptcy Code, records of the computations required by this part shall be maintained in accordance with § 1.31 of this chapter by the trustee for the greater of the period required by § 1.31 of this chapter or for a period of one year after the close of the bankruptcy proceeding for which they were compiled.

(2) *Accessibility*. The records required to be maintained by paragraph (c)(1) of this section shall be available during business hours to the Court, parties in interest, the Commission and the U.S. Department of Justice. At any time on or after the filing date, the commodity broker, or the trustee if a trustee has been appointed, shall be required to give the Commission and the U.S. Department of Justice immediate access to all records of the debtor, including records required to be retained in accordance with § 1.31 of this chapter and all other records of the commodity

broker, whether or not the Act or this chapter would require such records to be maintained by the commodity broker.

(d) *Liquidation*—(1) *Order of liquidation*—(i) *Open outcry*. Liquidation of open commodity contracts held for a house or a customer account by or on behalf of a commodity broker which is a debtor shall be accomplished in accordance with § 1.38 of this chapter: *Provided*, That to the extent reasonably possible the trustee shall first liquidate all net positions and shall subsequently liquidate all long and short positions in the same commodity in the same delivery month on the same contract market in tandem: and, *Provided further*, That any covered commodity owned by a debtor shall be liquidated, to the extent reasonably possible, at the same time as its cover.

(ii) *Book entry*. Notwithstanding paragraph (1), in appropriate cases, upon application by the trustee or the affected clearing organization, the Commission may permit offsetting open commodity contracts to be liquidated, or settlement on such contracts to be made, by book entry. Such book entry shall offset such trades on the books of the commodity broker using an execution price equal to the weighted average of the liquidation prices for contracts in the same commodity for the same delivery month on the same contract market which are not matched on the books of the commodity broker, or if there are no such unmatched contracts, using the average of the opening price and the settlement price of contracts in the same commodity for the same delivery month on the same contract market as of the close of business on the market day of the order for relief.

(2) *Liquidation only*. Nothing in this part shall be interpreted to permit the trustee to purchase or sell new commodity contracts for customers of the debtor except to offset open commodity contracts or to transfer any transferable notice received by the debtor or the trustee under any commodity contract: *Provided, however*, That the trustee may, in its discretion

and with approval of the Commission, cover uncovered inventory or commodity contracts of the debtor which cannot be liquidated immediately because of price limits or other market conditions, or may take an offsetting position in a new month or at a strike price for which limits have not been reached.

(e) *Other matters*—(1) *Determination as to bona fide hedges*. In determining which commodity contracts are eligible to be held open for transfer pursuant to customer instruction, the trustee may rely on the designation in the accounting records of the commodity broker that the account for or on behalf of which the contract is held is a hedging account. Commodity contracts maintained in a hedging account may be treated by the trustee as specifically identifiable.

(2) *Disbursements*. The trustee shall make no disbursements to customers prior to final distribution except with approval of the court or in accordance with § 190.08(d).

(3) *Investment*. The trustee shall promptly invest the equity resulting from the liquidation of commodity contracts, and the proceeds of the liquidation of specifically identifiable property, in obligations of the United States and obligations fully guaranteed as to principal and interest by the United States, and may similarly invest any customer equity in accounts which remain open in accordance with § 190.03: *Provided*, That such obligations are maintained in a depository located in the United States, its territories or possessions.

(4) *Margin calls—reasonable time*. Except as otherwise provided in this part, a reasonable time for meeting margin calls made by the trustee shall be deemed to be one hour, or such greater period not to exceed one business day, as the trustee may determine in its sole discretion.

(5) *Management of Long Option Contracts*. Subject to the applicable liquidation provisions the trustee must use its best efforts to assure that a

long option contract with value does not expire worthless.

(Secs. 2(a), 4c, 4d, 4g, 5, 5a, 8a, 15, 19 and 20 of the Commodity Exchange Act, as amended by the Futures Trading Act of 1982, Pub. L. 97-444, 96 Stat. 2294 (1983), 7 U.S.C. 2 and 4a, 6c, 6d, 6g, 7, 7a, 12a, 19, 23 and 24 (1976 & Supp. V. 1981 and Pub. L. 97-444); secs. 761-766 of the Bankruptcy Reform Act of 1978, as amended by the Bankruptcy Act Amendments, Pub. L. 97-222, 96 Stat. 235 (1982), 11 U.S.C. 761-766 (Supp. V. 1981 as amended by Pub. L. 97-222))

[48 FR 8739, Mar. 1, 1983, as amended at 48 FR 28980, June 24, 1983]

**§ 190.05 Making and taking delivery on commodity contracts.**

(a) *General.* (1) In the event that the trustee is unable to liquidate an open commodity futures contract subject to physical delivery or an option on a physical commodity, which cannot be settled in cash, prior to the last day of trading in that contract as required by §§ 190.02(f)(1) and 190.03(b)(5), the trustee must use its best efforts to prevent property which is to be delivered for or on behalf of a customer to fulfill that contract, or property for which delivery is being taken with respect to a customer pursuant to that contract, from becoming part of the debtor's estate.

(2) Delivery account shall mean any account prominently designated as such in the records of the debtor which contains only the specifically identifiable property associated with delivery set forth in § 190.01(kk) (3), (4), and (5), except that with respect to § 190.01(kk) (4) and (5), delivery need not be made or taken and exercise need not be effected for such property to be included in a delivery account.

(3) The portion of the price or the proceeds of a commodity contract upon delivery which is not specifically identifiable property under § 190.01(kk) (4) and (5) must be distributed pro rata under section 766(h) of the Code.

(b) *Contract market rules for deliveries on behalf of a customer of a debtor.* Except in the case of a commodity futures or option contract which is settled in cash, each contract market shall adopt, maintain in effect and enforce rules which have been approved by the Commission in accordance with section

5a(a)(12) of the Act and § 1.41 of this chapter, which:

(1) Permit the making and taking of delivery to fulfill a commodity futures contract for a physical commodity or an option on a physical commodity, which has not become part of the debtor's estate on the date of the entry of the order for relief but with respect to which commodity contract:

(i) Trading has ceased on the date of the entry of the order for relief;

(ii) Notice of delivery has been tendered on or before the date of the entry of the order for relief; or,

(iii) Trading ceases before it can be liquidated by the trustee, to be effected directly between the customer of the debtor and the person identified by the clearing organization as the party to whom delivery should be made or from whom delivery should be taken by such customer of the debtor without intervention of the trustee and without including such physical commodity or the payment for such physical commodity in any bankruptcy distribution: *Provided, however,* That a customer shall not be relieved of his obligation to make or take delivery for the sole reason that delivery must be made or taken from a commodity broker which is a debtor; and

(2) Recognize that the equity of a customer of the debtor in a commodity contract upon which delivery is made or taken must be included in the net equity claim of that customer and, as such, can only be distributed pro rata at the time of, and as part of, any distributions to customers made by the trustee.

(c) *Delivery made or taken within the debtor's estate.* (1) Any property in a delivery account which is part of the debtor's estate on the date of the order for relief may be returned under the terms set forth in § 190.08(d)(1)(ii).

(2) If the property to be delivered is part of the debtor's estate on the date of the order for relief and a customer of the debtor is required to make delivery, the trustee must make delivery in the same manner as if no bankruptcy had occurred and the party by whom delivery is taken must pay the full notice price or strike price for delivery.